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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/827,476

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Kenneth B. Higgins

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Legal Department (M-495)

P.O. Box 1926

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EXAMINER

JUSKA, CHERYL

ART UNIT

PAPER NUMBER

1771

MAIL DATE

DELIVERY MODE

10/02/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/827,476	Applicant(s) HIGGINS ET AL.	
	Examiner Cheryl Juska	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 20-24, 27-30, 33-36, 38, 39, 42, 43 and 50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 20-24, 27-30, 33-36, 38, 39, 42, 43, and 50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed July 23, 2007, has been entered. Claims 1 and 50 have been amended as requested. Claims 12-19, 25, 26, 31, 32, 37, 40, 41, and 44-49 have been cancelled. Thus, the pending claims are 1-11, 20-24, 27-30, 33-36, 38, 39, 42, 43, and 50.
2. Said amendment is sufficient to overcome the 102 and 103 rejections based upon US 5,972,148 issued to Lukowski as set forth in sections 7-13 of the last Office Action (Non-Final mailed 02/22/07). Specifically, the subject matter of claim 19, which was not previously rejected over Lukowski has been incorporated into independent claims 1 and 50. However, the following new 103 rejections are made.
3. Applicant's arguments presented with said amendment (paragraph spanning pages 10-11 – page 11, 1st paragraph) are sufficient to overcome the 112, 1st rejections set forth in sections 4 and 6 of the last Office Action. Additionally, applicant's arguments (page 10, 1st and 2nd paragraphs) regarding the 112, 1st rejection set forth in section 5 of the last Office Action are also sufficient to overcome said rejection.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1771

5. Claims 1-11, 20-24, 27-30, 33-36, 38, 42, 43, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,972,148 issued to Lukowski, Sr. in view of US 3,579,941 issued to Tibbals.

Lukowski discloses a process for applying a removable and releasable liner over an adhesive layer of a laminated vinyl flooring product (abstract and col. 3, lines 60-63). Said adhesive layer “has sufficient tack to secure the flooring product 11 to the subfloor, while permitting removal and repositioning of the flooring product 11 without damaging the bond between the vinyl wear layer 15 and the felt layer 14 (col. 4, lines 1-4). The adhesive is preferably an acrylic latex (col. 4, lines 19-24). Thus, Lukowski teaches a surface covering element comprising a show surface of vinyl laminate and an underside having a “friction enhancing coating composition” exhibiting more lateral grip than an uncoated underside, wherein said coating composition does not permanently stick with little or no blocking (i.e., releasable adhesive).

Hence, the features of claims 1, 5, 6, 20, 42, and 50 are taught by the cited Lukowski patent with the exception of the layer of foam cushioning between the show surface and the friction enhancing coating composition. However, it is known in the art to incorporate foam layers in flooring materials in order to provide cushioning, insulating, and leveling properties. For example, Tibbals teaches parquet flooring tile joined in blocks having a foam cushion layer underneath the parquet show surface (abstract and col. 1, lines 39-67). Thus, it would have been readily obvious to one skilled in the art to incorporate a foam layer in the Lukowski invention in order to provide cushioning, insulating, and leveling properties to the flooring materials.

Art Unit: 1771

Regarding claim 43, said claim is also rejected since the limitation of “predrafted elliptically needled felt” is not given patentable weight at this time. Specifically, while the cited prior art fails to explicitly teach a “predrafted elliptically needled felt,” it is argued that this description of the felt material amounts to a method limitation in a product claim. In other words, the method steps of predrafting and elliptically needling are not believed to produce a structurally different product than the general felt taught by Lukowski. As such, the limitation of “predrafted elliptically needled felt” is not given patentable weight at this time and claim 43 is also rejected.

Regarding claims 21-24, although the prior art does not explicitly teach the vertical adhesion limitations of said claims, it is reasonable to presume that said limitations are met by the teachings of the prior art. Support for said presumption is found in the use of similar materials (i.e., vinyl laminate flooring having a foam cushioning layer, a felt layer, and a releasable pressure sensitive adhesive of an acrylic latex thereon) used to produce the flooring product. Like materials cannot have mutually exclusive properties. The burden is upon applicant to prove otherwise. Therefore, claims 21-24 are rejected.

With respect to claims 2-4, Lukowski teaches a wet add-on level for the adhesive coating (col. 4, lines 19-20), but fails to disclose the dry add-on mass per area. However, it is reasonable to presume that said wet add-on level would dry to the range claimed by applicant since like materials are employed for like functions. In the alternative, it would have been readily obvious to one of ordinary skill in the art to optimize the amount of adhesive coating applied in order to achieve the intended use of the flooring material. It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 205 USPQ

Art Unit: 1771

215. In this case, a suitable adhesive basis weight would be determined by at least cost, degree of adhesion required, weight and flexibility of the overall product. Therefore, claims 2-4 are rejected as being obvious over the cited art.

Regarding claims 7-11, 27-30, and 38, while the cited prior art does not explicitly teach the claimed adhesive compositions, it would have been readily obvious to one of ordinary skill in the art to substitute any of the claimed adhesives for the acrylic latex disclosed by Lukowski since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Any known adhesive that meets the functional requirements of Lukowski would be readily obvious to one skilled in the art. Therefore, claims 7-11, 27-30, and 38 are rejected.

Regarding claims 33-36, while the cited prior art fails to explicitly teach the claimed PVC layers, it is asserted that PVC is well known in the art of flooring materials as a backing material in both a hardback and a cushioning form. Applicant is hereby given Official Notice of this fact. As such, it would have been readily obvious to one of ordinary skill in the art to employ a PVC foam as the foam cushioning layer of the cited prior art. The substitution of PVC for another polymeric backing layer would have yielded predictable results to one of ordinary skill in the art. Additionally, it would have been readily obvious to one of ordinary skill in the art to substitute other known flooring show surfaces, such as wood, ceramic, and laminate for the vinyl flooring of Lukowski since doing so would have yielded predictable results. Therefore, claims 33-36 are also rejected.

6. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Lukowski and Tibbals references in view of US 3,847,647 issued to Bahlo.

While Lukowski and Tibbals fail to teach application of the friction enhancing coating in a discontinuous pattern, it is well known in the art to apply adhesive coatings to carpet tiles in discontinuous patterns. For example, Bahlo discloses an adhesive backed removable carpet tile comprising a foam backing and a carpet layer (abstract). "To provide the proper release strength, the adhesive is applied to the foam backing by a figured roller to cover between 10 and 50 percent of the foam backing." (abstract and Figures 1 and 3). Therefore, it would have been readily obvious to one of ordinary skill in the art apply the adhesive coating in a discontinuous pattern in order to reduce cost and/or to achieve the proper adhesive strength. Hence, claim 39 is rejected.

Conclusion

7. The art made of record and not relied upon is considered pertinent to applicant's disclosure.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

Art Unit: 1771

applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Cheryl Juska/
Primary Examiner
Art Unit 1771

cj
October 2, 2007